

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

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: **Chapter 11**  
: **Case No. 08-12229 (MFW)**  
: **(Jointly Administered)**  
: **Hearing Date: December 22, 2011 at 11:30 a.m. (ET)**  
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*In re*  
**WASHINGTON MUTUAL, INC., et al.,<sup>1</sup>**  
**Debtors.**

**DEBTORS' RESPONSE TO THE MOTION OF  
WILLIAM DUKE FOR AN ORDER, PURSUANT TO  
SECTION 105(a) OF THE BANKRUPTCY CODE AND  
FEDERAL RULES OF EVIDENCE, TO INCLUDE IN THE RECORD  
OF CASE NO. 08-12229(MFW) CERTAIN DOCUMENTS AND INFORMATION**

Washington Mutual, Inc. ("WMI") and WMI Investment Corp., as debtors and debtors in possession (collectively, the "Debtors"), file this response (the "Response") to the *Motion of William Duke for an Order, Pursuant to Section 105(a) of the Bankruptcy Code and Federal Rules of Evidence, to Include in the Record of Case No. 08-12229(MFW) Certain Documents and Information* [D.I. 9174] (the "Motion"), filed on December 9, 2011, and respectfully represent as follows:

**The Motion**

1. The Motion requests that certain documents (the "Documents") be admitted into evidence in the Debtors' chapter 11 cases. In support therefor, the movant suggests that the Documents need be admitted because, in this Court's September 13, 2011 opinion [D.I. 8612] with respect to, among other matters, confirmation of the *Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States*

<sup>1</sup> The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 925 Fourth Avenue, Seattle, Washington 98104.



*Bankruptcy Code*, dated February 7, 2011 [D.I. 6696] (the “Modified Sixth Amended Plan”), the Court noted that certain objections to confirmation failed for lack of support in the record.

2. The Motion is devoid of merit, bears no relationship to the status of these cases and should be denied in its entirety.

### The Response

3. Construing the Motion most liberally, the Motion fails to specify to what dispute or requested relief the Documents relate. It is not clear whether the Motion seeks to offer Documents in support of prior objections filed in connection with the Modified Sixth Amended Plan, or whether the Documents should be admitted in connection with future, unspecified objections. It is impossible to determine the relevance of the Documents in isolation from any pleading or dispute. If they relate to the prior confirmation hearings, the Court closed the record with respect to each of those matters and, after due deliberations, ruled.


4. To the extent the Documents may be relevant to the Court’s consideration of the *Seventh Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code*, dated December 12, 2011 [D.I. 9178] (the “Seventh Amended Plan”), it is premature for the Court to consider the admission of the Documents at this time. First, it is unclear if any objections to the Seventh Amended Plan would be interposed by the movant. Likewise, it is unclear whether any of the Documents would constitute admissible evidence or be relevant in any manner. Accordingly, the Debtors submit that the appropriateness of including the Documents in the case record should be considered, if at all, in connection with a hearing to consider the confirmation of the Seventh Amended Plan or, for that matter, any other contested matter.

5. Lastly, it should be noted that some of the Documents are already in the record of these chapter 11 cases. For example, the Motion attaches an excerpt of the hearing

transcript from the December 2010 confirmation hearing on the *Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code*, dated October 6, 2010 [D.I. 5548]. As the Court has mentioned several times, the confirmation process has been cumulative and the proceedings from prior hearings have been incorporated. Thus, to that limited extent, no relief is necessary.

WHEREFORE the Debtors respectfully request that the Court deny the Motion and the relief requested therein and grant the Debtors such additional relief as is just.

Dated: Wilmington, Delaware  
December 15, 2011



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